



AF/3625
MAIL STOP PETITION
JFW

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicants: H.H. Birch et al. Attorney Docket No. EXIN116550

Application No: 09/648,581 Group Art Unit: 3625

Filed: August 25, 2000 Examiner: M. Thein

Title: SYSTEM AND METHOD FOR MATCHING AN OFFER WITH A QUOTE

PETITION REQUESTING REINSTATEMENT OF APPEAL
UNDER C.F.R. 1.193(b)(2)

January 3, 2005

TO THE COMMISSIONER FOR PATENTS:

A. Petition

Applicant hereby requests reinstatement of the appeal in the above-identified patent application. This petition is accompanied by a Supplemental Appeal Brief. No fee is due.

B. Additional Fee Charges or Credit for Overpayment.

The Commissioner is hereby authorized to charge any fees under 37 C.F.R. §§ 1.16, 1.17 and 1.18 which may be required during the entire pendency of the application, or credit any overpayment, to Deposit Account No. 03-1740.

Respectfully submitted,

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I hereby certify that this correspondence is being deposited with the U.S. Postal Service in a sealed envelope as first class mail with postage thereon fully prepaid and addressed to Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on the below date.

Date: Jan 3, 2005

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MAIL STOP APPEAL

BRIEF - PATENTS

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

Applicants: H.H. Birch et al. Attorney Docket No. EXIN116550
Application No: 09/648,581 Group Art Unit: 3625
Filed: August 25, 2000 Examiner: M. Thein
Title: SYSTEM AND METHOD FOR MATCHING AN OFFER WITH A QUOTE

APPELLANTS' SUPPLEMENTAL APPEAL BRIEF

Seattle, Washington

January 3, 2005

TO THE COMMISSIONER FOR PATENTS:

This Supplemental Appeal Brief is filed in support of the Petition to Request Reinstatement of the Appeal concurrently filed in the above-identified application on January 3, 2005, to the Board of Patent Appeals and Interferences appealing the Decision, dated October 1, 2004, of the Examiner rejecting Claims 1-29 after reopening prosecution on the matter.

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I. REAL PARTY IN INTEREST

The subject application is owned by Expedia, Inc., of Bellevue, Washington.

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II. RELATED APPEALS AND INTERFERENCES

Upon information and belief, appellants do not have any knowledge of related appeals or interferences that may directly affect or have a bearing on the decision of the Board of Appeals and Interferences (hereinafter, the "Board") in the pending Appeal.

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III. STATUS OF THE CLAIMS

On August 25, 2000, appellants filed the pending patent application, including Claims 1-29. On May 23, 2003, the Examiner issued a first Office Action rejecting Claims 1-29. On August 25, 2003, appellants filed an Amendment and Response in which Claims 1, 6, 7, 9, 15, and 18 were amended, no claims were canceled, and no claims were added.

On November 24, 2003, the Examiner issued a second Office Action finally rejecting Claims 1-29 under 35 U.S.C. § 102(b) as being anticipated by a prior art reference. On February 5, 2004, and February 10, 2004, appellants' representative conducted telephone interviews with the Examiner. During these telephone interviews, in discussing whether the prior art anticipated the present claims, the Examiner raised two issues of rejection not specifically mentioned in the second Office Action, but recited in the March 18, 2004, Interview Summary/Advisory Action. These issues are: (1) that claim elements that began with the word "if" are written in alternative format, and, therefore, can be disregarded for purposes of distinguishing the claims from the prior art; and (2) that even though a preamble to a claim recites statutory subject matter upon which body of the claim operates, that statutory subject matter must be positively recited in the body of the claims.

On February 24, 2003, appellants filed an Amendment and Response in which Claims 1 and 12 were amended, no claims were canceled, and no claims were added.

On March 25, 2004, appellants filed a Notice of Appeal in which appellants requested the Board to reverse the rejections of Claims 1-29. The supporting Appeal Brief was filed on June 25, 2004.

On October 1, 2004, the Examiner reopened prosecution on the matters and rejected Claims 1-22 as being anticipated by a newly cited reference, U.S. Patent No. 5,331,546 to

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Webber et al. (hereinafter "Webber"), and Claims 23-29 as being unpatentable over Webber, and Webber in view of a previously cited reference, DeLorme.

On January 3, 2005, appellants filed a Petition to Reinstate the Appeal, and concurrently filed this Supplemental Appeal Brief. The claims on appeal, Claims 1-29, are set forth in Section IX, Appendix of Claims.

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IV. STATUS OF AMENDMENTS

On February 25, 2004, appellants submitted Amendments to Claims 1 and 12. As per the Advisory Action dated March 18, 2004, the Amendments were entered into the record. There are no other outstanding amendments.

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V. SUMMARY OF THE INVENTION

Appellants' invention is directed at providing a system and method for matching a customer's offer with a quote from a product provider. In accordance with the present invention, two groups of providers are identified by the system. The first group, called the preferred provider group, includes a group of providers that have specifically negotiated for, or somehow otherwise obtained, an arrangement with the system to receive preferential treatment in responding to consumer offers. The second group is referred to as the non-preferred provider group. Both groups are made up of providers that offer the sought-for goods.

As members of the preferred provider group, each preferred provider is given an exclusive opportunity to satisfy a customer's offer. In other words, after receiving a customer's offer, the system first turns to the preferred provider group, iterating among the preferred providers, thus giving each preferred provider an opportunity to respond, or satisfy, the customer's offer. As each preferred provider is given its own opportunity to satisfy the customer's offer, as per its negotiated, preferred status, a preferred provider does not expend resources in continually monitoring for such opportunities in order to beat out the competition (which is endemic to other, race-type systems).

With respect to the preferred provider group, each preferred provider is ranked, or ordered, according to preference criteria. Each preferred provider may negotiate for a particular preference ranking among the group of preferred providers. According to the preference ranking of preferred providers, when a customer's offer is received, a preferred provider with a higher preference ranking is given an opportunity to respond to the offer prior to another preferred provider with a lower preference ranking. Thus, when a higher ranked preferred provider satisfies the customer's offer, the offer is not made available to other, lower ranked preferred providers, or to the non-preferred providers.

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As mentioned above, the second group of providers is referred to as the non-preferred provider group. The non-preferred provider group includes those providers that offer the sought-for goods, but, for whatever reason, are not members of the preferred provider group. Members of the non-preferred provider group are given an opportunity to satisfy the customer's offer only if a preferred provider did not satisfy the offer. In other words, the non-preferred providers are given an opportunity to respond after the preferred provider group. No order, ranking, or preference is given to members of the non-preferred provider group. The non-preferred providers typically must satisfy the customer's offer in a race-type fashion. It should be noted that, in some circumstances, a provider may be included in both the preferred provider group and the non-preferred provider group.

In operation, in response to receiving a consumer's offer, the system first presents the subject matter of the offer (the goods) to the members of the preferred provider group, beginning with the highest ranked preferred provider to the lowest ranked preferred provider, continuing until the offer is satisfied by a preferred provider or the group of preferred providers is exhausted (*i.e.*, each have been given their opportunity to respond to or satisfy the offer, but have not.)

At each selection of a preferred provider, the currently selected preferred provider is presented with the customer's offer, and in particular, the request for the sought-for goods. The currently selected preferred provider has the opportunity to make one or more quotes in order to satisfy the offer. If at least one quote from the currently selected preferred provider satisfies the consumer's offer, the system completes the transaction between the consumer and the currently selected preferred provider. Once a customer's offer is satisfied by a preferred provider, no further iterations to lower-ranked preferred providers are made, nor is the customer's offer made available to the members of the non-preferred provider group.

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A preferred provider may submit multiple quotes to satisfy a customer's offer to purchase the goods. Each quote specifies a price for which the provider is willing to sell the sought-for goods to the customer. Upon receiving multiple quotes from a selected preferred provider, the system orders the quotes according to their price, and selects the quote with the highest price that satisfies the consumer's offer, *i.e.*, is lower than the price that is set in the offer by the customer.

When the group of preferred providers is exhausted, *i.e.*, all preferred providers fail to satisfy the customer's offer, the system presents the offer to the members of the non-preferred provider group. As mentioned above, the non-preferred providers in the non-preferred provider group are not ranked, and the customer's offer is presented to the non-preferred providers collectively, rather than iteratively. Should more than one non-preferred provider attempt to satisfy the customer's offer, the system could employ predetermined selection criteria to select the "winning" non-preferred provider. Selection criteria may be based on any number of factors, such as maximizing profitability to the system, best competitive price to the customer, or first non-preferred provider to respond to the offer. Other rules or factors may also be utilized.

The present invention offers numerous benefits to all parties. Individual providers can negotiate for a preferential access to customers' offers. In addition to preferential treatment, the present invention creates an incentive for the providers to make competitive offers. The system is benefited because it is able to maximize its profits using the competitive offers from preferred providers, while still meeting the customer's expectations. Customers are also benefited as they receive the requested product at or below the price specified in the offer.

Explanation of the Invention as Defined in the Claims

Claims 1-10

Independent Claim 1 is directed to a method for matching an offer for a product with a quote. The method comprises, at a computer, receiving the offer from a customer.

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(Specification, pg. 25, line 20 - pg. 26, line 3; Figure 10, box 1003.) After receiving the offer, at least one quote is obtained from a first provider of a group of preferred providers. (Specification, pg. 29, lines 7-22; Figure 12, boxes 1203-1205.) The at least one quote is evaluated to determine whether the at least one quote satisfies the offer. (Specification, pg. 29, line 23 - pg. 30, line 8; Figure 12, box 1207.) If the at least one quote does not satisfy the offer, repeatedly: selecting another preferred provider; obtaining at least one quote from the selected preferred provider; and evaluating the quote to determine whether the at least one quote satisfies the offer, until the offer is satisfied or until the group of preferred providers is exhausted. (Specification, pg. 30, line 5 - pg. 31, line 3; Figure 12, boxes 1205-1215.) Thereafter, if the group of preferred providers is exhausted without satisfying the offer, attempting to satisfy the offer from a group of non-preferred providers. (Specification, pg. 26, lines 13-17; Figure 10, boxes 1007-1009.) If the offer is satisfied either from the group of preferred providers or from the group of non-preferred providers, negotiating the purchase of the product from the provider associated with the satisfying quote. (Specification, pg. 27, lines 9-12; Figure 10, box 1013.)

Claims 2-10 are dependent from Claim 1, and are directed to the following additional recitations. Claim 2 depends from Claim 1 and recites that, when attempting to satisfy the offer from the group of non-preferred providers: obtaining at least one quote from one or more providers in the non-preferred provider group; and if the most competitive quote from a non-preferred provider satisfies the offer, selecting that most competitive quote as the satisfying quote. (Specification, pg. 31, lines 18-24; pg. 35, line 23 - pg. 36, line 8; Figure 13, box 1305.) Claim 3 depends from Claim 2, and recites that the most competitive quote from a non-preferred provider includes the lowest quote provided by a non-preferred provider. (Specification, pg. 31, lines 18-24; pg. 36, lines 10-12; Figure 13, box 1305.) Claim 4 depends from Claim 1, and recites that the product is a travel service. (Specification, pg. 14, line 24 - pg. 15, line 1; pg. 36,

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lines 14-15; Figure 2, box 224.) Claim 5 depends from Claim 4, and recites that the travel service includes airfare. (Specification, pg. 16, lines 14-21; pg. 36, lines 17-18.)

Claim 6 depends from Claim 1, and recites that evaluating the at least one quote from the selected preferred provider comprises evaluating the quotes from the selected preferred provider in descending order of value, from the highest quote to the lowest quote, and selecting the highest quote that satisfies the offer. (Specification, pg. 29, line 23 - pg. 30, line 5.) Claim 7 depends from Claim 1, and recites that negotiating the purchase of the product associated with the satisfying quote includes making a reservation for a travel service by the provider at a value corresponding to the satisfying quote. (Specification, pg. 26, lines 4-17; Figure 10, box 1013.) Claim 8 depends from Claim 1, and recites that each quote obtained from preferred and non-preferred providers is obtained indirectly through a global distribution system that stores fare information associated with the providers. (Specification, pg. 15, lines 8-10; pg. 37, lines 7-11.) Claim 9 depends from Claim 1, and recites that each preferred provider is associated with a preferred criteria, and evaluating the offers from the preferred provider comprises determining if the quote from the preferred provider satisfies the preferred criteria associated with the preferred provider. (Specification, pg. 30, lines 1-5.) Claim 10 depends from Claim 9, and recites that evaluating the offers from the preferred provider further comprise evaluating the offers from the preferred provider that do not meet the preferred criteria. (Specification, pg. 30, lines 9-14.)

Claim 11

Independent Claim 11 is directed at a computer-readable medium having computer-executable instructions for performing the method described above in regard to Claim 1. (Specification, pg. 38, lines 1-2.)

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Claims 12-23

Appellant asserts that Claims 12-23 stand or fall alone due to the fact that they recite a differing scope of elements. More particularly, these claims, and particularly Claim 12, recite ranking the preferred providers in a preferred provider group, and selecting the highest ranked provider to satisfy the quote.

Independent Claim 12 is directed at a computer-readable medium having computer-executable instructions which, when executed on a computer, comprise the method of first receiving a customer's offer, the offer representing a value the customer is willing to pay for a product. After receiving the offer, ranking each provider in a group of preferred providers according to preferred criteria. Thereafter, selecting the highest ranked preferred provider, and attempting to satisfy the customer's offer with the highest ranked preferred provider by determining whether a quote obtained from the preferred provider satisfies the preferred criteria associated with the highest ranked preferred provider. (Specification, pg. 29, line 7 - pg. 31, line 6.)

Claims 13-23 depend from independent Claim 12 and include further recitations as follows. Claim 13 recites that if the attempt to match the offer with the highest ranked preferred provider is successful, negotiating the purchase of the product from the highest ranked preferred provider. (Specification, pg. 27, lines 12-15; Figure 10, box 1013.) Claim 14 depends from Claim 13, and recites that if the attempt to match the offer with the highest ranked preferred provider is unsuccessful, repeatedly attempting to match the offer with other preferred providers until either the offer is matched or until the plurality of preferred providers is exhausted. (Specification, pg. 30, line 5 - pg. 31, line 3; Figure 12, boxes 1205-1215.) Claim 15 depends from Claim 14, and recites that attempting to match the offer with other preferred providers is performed in descending order of the ranking associated with each preferred provider.

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(Specification, pg. 30, line 19 - pg. 31, line 3.) Claim 16 depends from Claim 14, and recites that if repeatedly attempting to match the offer with other preferred providers is unsuccessful, attempting to match the offer with one of a plurality of non-preferred providers, and if successful, negotiating the purchase of the product from the matching non-preferred provider. (Specification, pg. 26, line 13 - pg. 27, line 13.) Claim 17 depends from Claim 16, and recites that attempting to match the offer with a non-preferred provider comprises obtaining a quote from one or more non-preferred providers and selecting the lowest quote that satisfies the offer. (Specification, pg. 31, lines 18-24; pg. 36, lines 10-12; Figure 13, box 1305.) Claim 18 depends from Claim 17, and recites that each quote is obtained from each non-preferred provider indirectly through a global distribution system that stores fare information associated with each non-preferred provider. (Specification, pg. 15, lines 8-10; pg. 39, lines 19-23.) Claim 19 depends from Claim 12, and recites that the product includes a travel service. (Specification, pg. 14, line 24 - pg. 15, line 1; pg. 40, lines 6-7.) Claim 20 depends from Claim 19, and recites that the travel service includes airfare. (Specification, pg. 16, lines 1421; pg. 40, lines 9-10.) Claim 21 depends from Claim 14, and recites that each quote is obtained from each preferred provider indirectly through a global distribution system that stores fare information associated with each preferred provider. (Specification, pg. 15, lines 8-10; pg. 40, lines 12-15.) Claim 22 depends from Claim 12, and recites that the preferred criteria is negotiated with the preferred providers. (Specification, pg. 3, lines 1-7.) Claim 23 depends from Claim 12, and recites that the preferred provider criteria comprises a round robin decision process based upon industry market share of the preferred providers. (Specification, pg. 40, lines 20-22.)

Claims 24-29

Independent Claim 24 is directed at a computer system for matching an offer with a quote. The computer system includes an online travel service exchanger including a Web server

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component and a travel server component. (Specification, pg. 15, line 23 - pg. 16, line 1.) The Web server component interfaces with a customer machine over a network and receives from the customer machine an offer for a product, the offer including the cost for the product. (Specification, pg. 19, lines 3-19.) The travel server component obtains at least one quote from a plurality of providers. (Specification, pg. 19, lines 20-25.) The plurality of providers comprises two groups: a preferred provider group and a non-preferred provider group. Each of the preferred providers in the preferred provider group have a distinct preference ranking. (Specification, pg. 13, line 10 - pg. 14, line 18.) The online travel service exchanger is configured to attempt to match the offer with each preferred provider in the preferred provider group in descending order of preference. (Specification 13, lines 16-18.)

Claims 25-29 depend from independent Claim 24, and include further recitations as follows. Claim 25 depends from Claim 24, and recites that the online travel service exchanger is further configured to negotiate the purchase of the product from the provider selected as a match for the offer. (Specification, pg. 27, lines 9-15; Figure 10, box 1013.) Claim 26 depends from Claim 24, and recites that the travel server component obtains the quotes from each preferred provider from a global distribution system configured to make available fare information associated with each preferred provider. (Specification, pg. 19, line 20 - pg. 20, line 9.)

Claim 27 depends from Claim 24, and recites that the online travel service exchanger further evaluates quotes provided by each preferred provider in descending order of preference ranking by determining whether the quotes provided satisfy a preference criteria associated with each provider. (Specification, pg. 16, line 22 - pg. 17, line 18.) Claim 28 depends from Claim 24, and recites that the online travel service exchanger attempts to match the offer with one of the non-preferred providers by evaluating quotes supplied by the non-preferred providers to identify a lowest quote and selecting the lowest quote as the matching quote.

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(Specification pg. 14, lines 13-18.) Claim 29 depends from Claim 28, and recites that the travel server component obtains the quotes from the non-preferred providers from a global distribution system configured to make available fare information associated with each non-preferred provider. (Specification, pg. 19, line 20 - pg. 20, line 9.)

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VI. ISSUES PRESENTED FOR REVIEW

In the October 1, 2004, Office Action (hereinafter "Office Action"), Claims 1-22 were rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 5,794,207, to Webber et al. (hereinafter "Webber"). Claim 23 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Webber. Claims 24-29 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Webber in view of U.S. Patent No. 5,948,040 to DeLorme et al. (hereinafter "DeLorme"). Accordingly, the issues presented for review are as follows:

1. Whether Claims 1-22 are anticipated by Webber;
2. Whether Claim 23 is obvious in view of Webber; and
3. Whether Claims 24-29 are obvious in view of Webber and DeLorme.

While these issues will be discussed below in greater detail, in order to provide a basis for understanding and appreciating the arguments set forth below, appellants present a brief summary of the 35 U.S.C. § 102(b) reference, Webber.

Summary of Webber

Webber sets forth a system that determines "the lowest fares for the itineraries for which seats are available" according to various preference policies, including a customer's preference, corporate preference, etc. (Webber, Col. 4, lines 41-43.)

Upon receiving a customer's request, the Webber system interrogates a file to file **all available flights** which are appropriate according to the travel parameters in the request, apparently irrespective of the provider. (*See*, Webber, Col. 6, lines 29-34.) This flight information is translated into a format suitable for a computer reservation system (CRS) and submitted to a CRS to determine which, of all flights, are available. (*See*, Webber, Col. 6, lines 34-47.) Once the available flights have been identified, the available flights are sorted according to lowest total fare for the flights. (*See*, Webber, Col. 6, lines 47-53.) The available

flights are then filtered through the constraints of the travel policies relating to the customer. (See, Webber, Col. 6, lines 53-57.) "The best itineraries which remain after step 40 are the least cost itineraries which both have available seats and fares and meet the particular constraints of the individualized travel policy of the customer being serviced." (Webber, Col. 6, lines 57-60.)

As can be seen, the entire focus of the Webber system is to identify the lowest priced fare that satisfies the customer's personalized constraints (which may include corporate constraints as well as personal constraints.) Webber makes absolutely no reference to providers of the fares, let alone any reference to categorized providers (*i.e.*, preferred providers and non-preferred providers.) Even assuming that the personalized constraints somehow equate to preferred providers, the Webber system applies the constraints after flights are retrieved, which is backward from that found in the pending claims.

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VII. GROUPING OF CLAIMS

Claims 1-5 and 7-11 stand or fall together. Claim 6 stands or falls alone. Claims 12-23 stand or fall together. Claims 24-27 stand or fall together. Claims 28-29 stand or fall together.

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VIII. ARGUMENTS

Issue 1: Whether the Claims 1-22 Are Anticipated by Webber

Claims 1-5 and 7-11

Claim 1

In regard to independent Claim 1, appellants assert that Webber fails to disclose each and every element.

Webber Fails to Disclose Two Groups of Providers for Satisfying a Customer's Offer: A Preferred Provider Group and a Non-Preferred Provider Group

As a preliminary matter, Claim 1 recites two groups of providers: (1) a preferred provider group; and (2) a non-preferred provider group, both of which may be used by the system to attempt to satisfy a customer's offer. In particular, Claim 1 includes the following recitations that clearly recite the two **separate** groups of providers:

selecting a preferred provider from **a group of preferred providers**;

selecting another preferred provider from the group of preferred providers; and

attempting to satisfy the offer from **a group of non-preferred providers**.

The Office Action fails to identify in Webber what it assumes to be preferred and non-preferred providers. The Office Action's citations to Webber, as a basis of the rejections, simply reference passages in Webber that generally discuss searching for the lowest fares from all possible, candidate itineraries. Nowhere does Webber make a distinction between preferred providers and non-preferred providers.

Appellants note that Webber does make reference to "personal preferences" and to "non-preference factors" (e.g., Webber, Col. 7, lines 52-67). However, to equate such preferences (or non-preferences) to a preferred provider group and a non-preferred provider group is a gross mischaracterization of the information in these passages. These passages refer to finding "all of the itineraries which could be used to satisfy the trip request" (Webber, Col. 7,

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lines 54-55) and then to rank these candidate itineraries in terms of both preference factors and non-preference factors. Appellants further note that the "preferences" relate to the itineraries, not the providers of the itineraries. In sum, these passages make no reference to preferred and non-preferred groups of providers, but merely to identifying the best air fare that satisfies the request from "all of the itineraries which could be used to satisfy the trip request."

Webber Fails to Disclose Selecting a Preferred Provider From a Group of Preferred Providers

Appellants note that the Office Action completely fails to address the positive recitation in Claim 1 of "selecting a preferred provider from a group of preferred providers." However, appellants assert that Webber fails to disclose selecting a preferred provider. Indeed, Webber utterly fails to identify groups of providers, one preferred and one non-preferred, and selecting providers from the preferred provider group until a preferred provider satisfies the quote or until the group of preferred providers is exhausted. Webber further fails to disclose turning to the group of non-preferred providers to satisfy a customer's quote if the preferred providers fail to satisfy the quote.

Webber Fails to Disclose Obtaining at Least One Quote From the Selected Preferred Provider

As discussed above, Webber discloses examining all itineraries which could be used to satisfy the trip request. (Webber, Col. 7, lines 54-55.) This is entirely inconsistent with obtaining at least one quote from a single selected provider. More particularly, on the one hand Webber explicitly discloses examining all possible candidate itineraries, whereas the present claim obtains quotes from a single, selected preferred provider. Clearly, these are not equivalent.

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Webber Fails to Disclose Evaluating the at Least One Quote From the Selected Provider to Determine if the Quote Satisfies the Offer

While Webber may disclose evaluating all itineraries to determine candidate itineraries, Webber fails to disclose evaluating the at least one quote from a single selected provider to determine if the quote satisfies the offer. The Office Action cites to Webber, Col. 4, lines 19-50; Col. 6, lines 46-66; and Col. 9, lines 17-30 as disclosing "evaluating the at least one quote from the selected provider to determine if the quote satisfies the offer." However, these passages make no reference to evaluation quotes from a selected provider. Rather, these passages merely discuss evaluating "all appropriate flights for this particular trip" to determine whether they satisfy the search request. (Webber, Col. 6, lines 47-48.) Absolutely no mention is made as to evaluating only quotes from a selected preferred provider, as recited in Claim 1.

Webber Fails to Disclose Repeatedly Selecting Another Preferred Provider and Attempting to Satisfy the Offer From the Newly Selected Preferred Provider if the First Selected Preferred Provider Fails to Satisfy the Offer

Nothing in Webber discloses the following recitations from Claim 1:

repeatedly: selecting another preferred provider from the group of preferred providers; obtaining at least one quote for the product from the selected preferred provider; and evaluating the at least one quote from the selected preferred provider to determine if the at least one quote satisfies the offer; until the offer is satisfied or until the group of preferred providers is exhausted.

The Office Action references Webber, Col. 7, line 53 - Col. 8, line 2; and Col. 13, line 22 - Col. 14, line 26, as disclosing these recitations. Appellants disagree, asserting that these passages make no such disclosure. These passages, as others cited above, simply discuss various aspects of examining all itineraries to determine candidate itineraries, and then determining which candidate itineraries are the least costly. Clearly, these passages cannot reasonably be

construed as disclosing a process of turning, one by one, to the preferred providers in the preferred provider group to satisfy the offer.

Webber Fails to Disclose Attempting to Satisfy the Offer From the Group of Non-Preferred Providers When the Group of Preferred Providers Is Exhausted

Just as Webber fails to disclose a preferred provider group, Webber similarly fails to disclose a non-preferred provider group. It therefore follows that, if there is no preferred provider group, Webber must also fail to disclose turning to a non-preferred provider group to satisfy the offer if all of the preferred providers in the preferred provider group have failed to satisfy the offer.

The Office Action cites to Webber, Col. 10, line 62 - Col. 11, line 26; Col. 14, line 27 - Col. 15, line 30; and Col. 18, lines 34-49 as disclosing this element. Appellants disagree. Each of these passages discloses a portion of the process of determining the best priced fare of all candidate itineraries. These determinations are made according to preferences. However, while the terms "preferences" and "non-preference" are used, they are not used in conjunction with providers. Instead, they refer to certain criteria associated with each itinerary. They do not make reference to preferred providers and non-preferred providers.

As Webber Fails to Disclose Each Element of Claim 1, the 35 U.S.C. § 102(b) Rejection Was Improper

A rejection under "35 U.S.C. § 102 requires a finding that **each and every limitation** is found either expressly or inherently in a single prior art reference." *See, Transclear Corp. v. Bridgewood Services, Inc.*, 290 F.3d 1364, 1370 (Fed. Cir. 2002). (Emphasis added.) *See also, Structural Rubber Products Co. v. Park Rubber Co.*, 749 F.2d 707, 223 U.S.P.Q. (BNA) 1264 (Fed. Cir. 1984). As Webber fails to disclose each and every limitation, either expressly or inherently, appellants assert that the 35 U.S.C. § 102(b) was improper, and further assert that

Claim 1 is in condition for allowance. Accordingly, appellants request that the Board reverse the Office Action's 35 U.S.C. § 102(b) rejection of Claim 1, and allow the claim.

Claims 2-5 and 7-11

Claims 2-5 and 7-10 depend from independent Claim 1. Accordingly, for the same reasons described above in regard to Claim 1, appellants submit that Webber fails to disclose each element of Claims 2-10, especially when read in conjunction with independent Claim 1. Accordingly, appellants submit that the 35 U.S.C. § 102(b) rejections of Claims 2-10 were improper, and request that the Board reverse the rejections and allow the claims.

Independent Claim 11 is directed to a computer-readable medium having computer-executable instructions which, when executed on a computer, carry out the method recited in Claim 1. Thus, for the same reasons described above in regard to Claim 1, appellants submit that Webber fails to disclose each element of Claim 11. Accordingly, appellants submit that the 35 U.S.C. § 102(b) rejection of Claims 11 was improper, and request that the Board reverse the rejection and allow the claim.

Claim 6

Claim 6 depends from independent Claim 1. Thus, for the same reasons described above in regard to Claim 1, appellants submit that Webber fails to disclose each element of Claim 6, especially when read in conjunction with independent Claim 1. However, appellants assert that Claim 6 includes additional recitations that further distinguish it from Webber. Appellants further assert that due to these additional limitations, Claim 6 is separately patentable, and as such, Claim 6 stands alone.

Appellants assert that Webber fails to disclose the following recitation from Claim 6:

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evaluating the quotes **provided by the selected preferred provider** in descending order of value, from the highest quote to the lowest quote, and selecting the highest quote that satisfies the offer. (Emphasis added.)

The Office Action cites to Webber, Col. 6, lines 61-64; Col. 7, line 53 - Col. 8, line 2; Col. 11, lines 27-31; and Col. 15, lines 17-30, as disclosing the above recitation. However, an examination of each of the cited passages, discussed below, indicates that Webber fails to disclose the above recitation.

In each of the cited passages, candidate itineraries are evaluated to determine the best fares. Absolutely no mention is made as to evaluating "quotes provided by the selected preferred provider." Furthermore, no mention is made as to evaluating the quotes and "selecting the **highest quote that satisfies the offer.**" Indeed, this seems quite contrary to Webber, where the best fare is the lowest priced fare, not the highest quote that satisfies the offer. Appellants assert that it is unreasonable to assert that a lowest price search anticipates an evaluation that selects the highest quote that satisfies an offer.

Appellants submit that Webber fails to disclose each element of Claim 6. Appellants, therefore, submit that the 35 U.S.C. § 102(b) rejection of the claim was improper, and request that the Board reverse the rejection and allow the claim. Appellants further submit that, due to the unique nature of matching the offer to a quote, Claim 6 is separately patentable and stands alone.

Claims 12-15 and 18-25

Claim 12

The Office Action asserts that Webber discloses each element of independent Claim 12. Appellants disagree, and assert that Webber fails to disclose the following elements of Claim 12:

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ranking each preferred provider in a plurality of preferred providers according to a preferred criteria;

selecting a highest ranked preferred provider from the plurality of preferred providers; and

attempting to match the offer from the customer with the highest ranked preferred provider by **determining whether a quote obtained from the highest ranked preferred provider satisfies the preferred criteria associated with the highest ranked preferred provider.**

Webber Fails to Disclose Ranking Preferred Providers

The Office Action cites Webber, Col. 6, lines 61-64; Col. 7, line 53 - Col. 8, line 2; Col. 11, lines 27-31; and Col. 15, lines 17-30, as disclosing "ranking each preferred provider from a plurality of preferred providers." Appellants respectfully disagree.

As a preliminary matter, already mentioned above, Webber utterly fails to disclose preferred provider and non-preferred provider groups.

Each of the above cited references discloses a portion of the process of selecting the best fare from candidate itineraries. Each discusses selecting itineraries according to preference criteria. In contrast, not one of the passages discloses **ranking providers**, as recited in Claim 12. Clearly, this element is not disclosed in Webber.

Webber Fails to Disclose Selecting the Highest Ranked Preferred Providers

The Office Action again cites to Webber, Col. 6, lines 61-64; Col. 7, line 53 - Col. 8, line 2; Col. 11, lines 27-31; and Col. 15, lines 17-30, this time as disclosing "**selecting a highest ranked preferred provider** from the plurality of preferred providers." Appellants disagree. As just mentioned, not one of these passages makes any reference to the providers of the itineraries.

They are simply directed to selecting a best fare. Not one of these passages disclose **selecting a highest ranked preferred provider** from the plurality of preferred providers.

Webber Fails to Disclose Attempting to Match the Offer From the Customer With the Highest Ranked Preferred Provider by Determining Whether a Quote Obtained From the Highest Ranked Preferred Provider Satisfies the Preferred Criteria Associated With the Highest Ranked Preferred Provider

In support of rejecting this recitation, the Office Action again cites to Webber, Col. 6, lines 61-64; Col. 7, line 53 - Col. 8, line 2; Col. 11, lines 27-31; and Col. 15, lines 17-30, as disclosing "attempting to match the offer from the customer with the highest ranked preferred provider by determining whether a quote obtained from the highest ranked preferred provider satisfies the preferred criteria associated with the highest ranked preferred provider." Appellants disagree.

Webber expressly discloses that its process finds "all of the itineraries which could be used to satisfy the trip request." (Webber, Col. 7, lines 54-55.) This is entirely inconsistent with the rejected recitation, specifically obtaining quotes only from the highest ranked preferred provider. Indeed, nothing in Webber remotely suggests selecting a preferred provider and obtaining quotes from that preferred provider.

Appellants submit that Webber clearly fails to disclose each element of independent Claim 12. Appellants therefore submit that the 35 U.S.C. § 102(b) rejection of this claim was improper, and request that the Board reverse the rejection and allow the claim.

Claims 13-15 and 18-22

Claims 13-15 and 18-22 depend from independent Claim 12. Accordingly, for the same reasons described above in regard to Claim 12, appellants submit that Webber fails to disclose each element of Claims 13-15 and 18-22, especially when these claims are read in conjunction with independent Claim 12. Accordingly, appellants submit that the 35 U.S.C. § 102(b)

rejections of Claims 13-15 and 18-22 were improper, and request that the Board reverse the rejections and allow the claims.

Claim 15

In addition to the above identified reasons, Claim 15 includes additional elements that further distinguish it from Webber. More particularly, Webber fails to disclose the following recitation:

wherein attempting to match the offer with other preferred providers is performed in **descending order of the ranking associated with each preferred provider.**

As already discussed, Webber clearly fails to disclose ranking any providers, let alone ranking preferred providers. As Webber clearly fails to disclose ranking preferred providers, Webber cannot and does not disclose attempting to match the offer with other preferred providers in a descending order of ranking. The Office Action again cites to Webber, Col. 6, lines 61-64; Col. 7, line 53 - Col. 8, line 2; Col. 11, lines 27-31; and Col. 15, lines 17-30, as disclosing this selection order. However, as already discussed above, this passage is directed to determining a lowest fare among all candidate fares, irrespective of the provider. Nothing in this passage indicates that the iteration is performed in a descending manner among preferred providers.

Appellants submit that Webber clearly fails to disclose the elements of Claim 15. Consequently, appellants submit that the 35 U.S.C. § 102(b) rejection was improper, and request the Board to reverse the rejection and allow the claim.

Claims 16-17

In regard to Claims 16 and 17, these claims recite similar elements to those described above in regard to Claim 1. In particular, Claims 16 recites the following elements:

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if repeatedly attempting to match the offer with other preferred providers is unsuccessful, attempting to match the offer with one of a plurality of non-preferred providers, and, if successful, negotiating a purchase of the product from the matching non-preferred provider.

Claim 16, in combination with Claim 12, refers to both a preferred provider group and a non-preferred provider group, both of which are used to satisfy the customer's offer. However, as already discussed above, Webber entirely fails to disclose both a preferred provider group and a non-preferred provider group.

Claim 17 depends from Claim 16. Thus, when read in combination with Claim 16, appellants assert that Webber fails to disclose each element of this dependent claim.

Clearly, for the reasons discussed above, Webber fails to disclose each element of Claims 16 and 17, especially when read in combination with independent Claim 12. Appellants therefore assert that the 35 U.S.C. § 102(b) rejections of Claims 16 and 17 were improper, and request that the Board reverse the rejections and allow the claims.

Issue 2: Whether Claim 23 Is Obvious in View of Webber

Claim 23

Claim 23 depends from independent Claim 12. Accordingly, appellants assert that for the same reasons that Claim 12 is allowable over Webber, Claim 23 is also allowable over Webber, especially when read in combination with Claim 12.

However, in addition to being patentable as dependent on Claim 12, Claim 23 includes additional elements that further distinguish it from Webber.

The Office Action asserts that Webber discloses substantially all elements of this claim **except** that Webber fails to disclose a round robin decision process based on industry market share. Appellants agree that Webber fails to disclose a round robin decision process based on

industry market share. However, the Office Action summarily dismisses the entire claim because the market share information is located on the computer-readable medium, is unrelated to the executed instructions, and therefore has no patentable weight. In other words, the Office Action dismisses the positive recitation "**wherein the preferred criteria comprises a round robin decision process**" because the market share information, used by the round robin decision process, is viewed as not being patentably distinguishable.

Whether or not the industry market share information should be considered in distinguishing the patentability of this claim for Webber, appellants assert that the Office Action impermissibly ignored the "round robin decision process" element of this claim. Indeed, the Office Action readily admitted that Webber fails to disclose, teach, or suggest a round robin process. Appellant asserts that the round robin decision process, alone, distinguishes this claim over Webber, irrespective of the criteria on which it is based.

It is well established that a proper *prima facie* case of obviousness is made only when the following criteria are met: (1) there is some suggestion or motivation to modify or combine the references; (2) there is a reasonable expectation of success; and (3) the combined references teach or suggest **all** claim recitations. *See, In re Vaeck*, 947 F.2d 488, 20 U.S.P.Q.2d 1438 (Fed. Cir. 1991). *See also*, M.P.E.P. § 2143. Accordingly, as admitted in the Office Action, Webber fails to teach or suggest each element of Claim 23. Therefore, appellants assert that the Office Action failed to make a proper *prima facie* case of obviousness and, correspondingly, the 35 U.S.C. § 103(a) rejection of Claim 23 is improper. Appellants request that the Board reverse the rejection and allow the claim.

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Issue 3: Whether Claims 24-29 Are Obvious in View of Webber and Delorme

Claims 24-27

Claim 24

The Office Action rejected independent Claim 24 as being unpatentable in view of Webber, and in further view of U.S. Patent No. 5,948,040 to DeLorme et al. (hereinafter "DeLorme"). Appellants disagree, and submit that the cited references fail to disclose each and every element of Claim 24. In particular, the cited references fail to disclose the following elements of Claim 24:

a travel server component configured to obtain at least one quote associated with each provider in a plurality of providers to provide the product at a cost, the plurality of providers **comprising at least two groups: a preferred providers group and a non-preferred providers group**, each preferred provider having a distinct preference ranking; and

the online travel service exchanger being further configured to attempt to **match the offer with each preferred provider in the preferred providers group in descending order of preference.**

The Office Action cites to Webber, Col. 3, line 7 - Col. 4, line 50; Col. 5, lines 22-50; Col. 6, line 22 - Col. 7, line 3; and Col. 16, line 53 - Col 8., line 2, as disclosing the two groups of providers, and matching the offer to a quote from each preferred provider in descending order of value. Appellants disagree.

As can be seen, Claim 24 identifies both a preferred provider group and the non-preferred provider group. As already mentioned above, Webber fails to disclose, teach, or suggest two identifiable provider groups. Indeed, the provider source in Webber is irrelevant as the express

purpose of Webber is to "find all of the itineraries which could be used to satisfy the trip request." (Webber, Col. 7, lines 54-55, emphasis added).

Furthermore, Webber fails to teach or suggest matching on offer with each preferred provider in descending order of preference among preferred providers. Webber's focus is entirely on the aspect of finding the best fare among all fares, irrespective of provider.

DeLorme was relied upon solely for disclosing a Web server. Thus, as combined, Webber and DeLorme, alone and in combination, fail to teach or suggest each element of Claim 24. Accordingly, appellants assert that the Office Action failed to make a proper *prima facie* case of obviousness and, correspondingly, the 35 U.S.C. § 103(a) rejection of Claim 23 is improper. Appellants request that the Board reverse the rejection and allow the claim.

Claims 25-29

Claims 25-29 depend from independent Claim 24. Accordingly, for the same reasons described above in regard to Claim 24, appellants submit that Webber and DeLorme, alone and in combination, fail to disclose each element of Claims 25-29, especially when these claims are read in conjunction with independent Claim 24. Accordingly, appellants submit that a proper *prima facie* case of obviousness has not been made and, thus, the 35 U.S.C. § 103(a) rejections of Claims 25-29 were improper. Appellants, therefore, request that the Board reverse the rejections of Claims 25-29 and allow the claims.

Conclusion

In view of the foregoing remarks, appellants submit that pending Claims 1-29 are in condition of allowance. Therefore, it is submitted that the Examiner's rejections of Claims 1-29 were in error. A reversal of the Examiner's rejections, and allowance of the claims, is respectfully requested.

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IX. APPENDIX OF CLAIMS INVOLVED IN THE APPEAL

1. A computer-implemented method of matching an offer for a product with a quote, comprising:
 - at a first computer:
 - receiving the offer from a customer;
 - selecting a preferred provider from a group of preferred providers;
 - obtaining at least one quote for the product from the selected preferred provider;
 - evaluating the at least one quote from the selected preferred provider to determine if the at least one quote satisfies the offer;
 - if the at least one quote from the selected preferred provider does not satisfy the offer, repeatedly:
 - selecting another preferred provider from the group of preferred providers;
 - obtaining at least one quote for the product from the selected preferred provider; and
 - evaluating the at least one quote from the selected preferred provider to determine if the at least one quote satisfies the offer;
 - until the offer is satisfied or until the group of preferred providers is exhausted;
 - if the group of preferred providers is exhausted without satisfying the offer, attempting to satisfy the offer from a group of non-preferred providers; and

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if the offer is satisfied from either the group of preferred providers or the group of non-preferred providers, negotiating the purchase of the product from the provider associated with the satisfying quote.

2. The computer-implemented method of claim 1, wherein attempting to satisfy the offer from the group of non-preferred providers comprises:

obtaining at least one quote from one or more non-preferred providers in the group of non-preferred providers;

evaluating the at least one quote obtained from each non-preferred provider to determine a most competitive non-preferred quote; and

if the most competitive non-preferred quote can satisfy the offer, selecting the most competitive non-preferred quote as the satisfying quote.

3. The computer-implemented method of claim 2, wherein the most competitive non-preferred quote includes the lowest quote provided by a non-preferred provider.

4. The computer-implemented method of claim 1, wherein the product is a travel service.

5. The computer-implemented method of claim 4, wherein the travel service includes airfare.

6. The computer-implemented method of claim 1, wherein evaluating the at least one quote from the selected preferred provider comprises evaluating the quotes provided by the selected preferred provider in descending order of value, from the highest quote to the lowest quote, and selecting the highest quote that satisfies the offer.

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7. The computer-implemented method of claim 1, wherein negotiating the purchase of the product from the provider associated with the satisfying quote includes making a reservation for a travel service provided by the provider at a value corresponding to the satisfying quote.

8. The computer-implemented method of claim 1, wherein each quote is obtained from each preferred provider and non-preferred provider indirectly through a global distribution system that stores fare information associated with each preferred provider and non-preferred provider.

9. The computer-implemented method of claim 1, wherein each preferred provider includes a respective associated preferred criteria, and wherein evaluating the at least one quote from the selected preferred provider to determine if the at least one quote that satisfies the offer comprises determining if the quote satisfies the preferred criteria associated with the selected preferred provider.

10. The computer-implemented method of claim 9, wherein attempting to satisfy the offer from the group of non-preferred providers comprises evaluating offers from the preferred providers that do not meet the preferred criteria.

11. A computer-readable medium having computer-executable instructions for performing the method recited in Claim 1.

12. A computer-readable medium having computer-executable instructions which, when executed on a computer, comprise:

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receiving from a customer machine an offer representing a value that a customer is willing to exchange for a product;

ranking each preferred provider in a plurality of preferred providers according to a preferred criteria;

selecting a highest ranked preferred provider from the plurality of preferred providers; and

attempting to match the offer from the customer with the highest ranked preferred provider by determining whether a quote obtained from the highest ranked preferred provider satisfies the preferred criteria associated with the highest ranked preferred provider.

13. The computer-readable medium of claim 12, further comprising:

if the attempt to match the offer with the highest ranked preferred provider is successful, negotiating a purchase of the product from the highest ranked preferred provider.

14. The computer-readable medium of claim 13, further comprising:

if the attempt to match the offer with the highest ranked preferred provider is unsuccessful, repeatedly attempting to match the offer with other preferred providers until either the offer is matched or until the plurality of preferred providers is exhausted.

15. The computer-readable medium of claim 14, wherein attempting to match the offer with other preferred providers is performed in descending order of the ranking associated with each preferred provider.

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16. The computer-readable medium of claim 14, wherein if repeatedly attempting to match the offer with other preferred providers is unsuccessful, attempting to match the offer with one of a plurality of non-preferred providers, and, if successful, negotiating a purchase of the product from the matching non-preferred provider.

17. The computer-readable medium of claim 16, wherein attempting to match the offer with one of the plurality of non-preferred providers comprises obtaining from one or more non-preferred providers a quote to provide the product, and selecting a lowest quote from the quotes provided that satisfies the offer.

18. The computer-readable medium of claim 17 wherein each quote is obtained from each non-preferred provider indirectly through a global distribution system that stores fare information associated with each non-preferred provider.

19. The computer-readable medium of claim 12, wherein the product includes a travel service.

20. The computer-readable medium of claim 19, wherein the travel service comprises airfare.

21. The computer-readable medium of claim 14 wherein each quote is obtained from each preferred provider indirectly through a global distribution system that stores fare information associated with each preferred provider.

22. The computer-readable medium of claim 12 wherein the preferred criteria is negotiated with the preferred providers.

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23. The computer-readable medium of claim 12 wherein the preferred criteria comprises a round robin decision process based upon industry market share of the preferred providers.

24. A computer system for matching offers with quotes, comprising:

an online travel service exchanger, including:

a web server component configured to interface with a customer machine over a network connection and receive from the customer machine an offer for a product, the offer identifying a cost for the product;

a travel server component configured to obtain at least one quote associated with each provider in a plurality of providers to provide the product at a cost, the plurality of providers comprising at least two groups: a preferred providers group and a non-preferred providers group, each preferred provider having a distinct preference ranking; and

the online travel service exchanger being further configured to attempt to match the offer with each preferred provider in the preferred providers group in descending order of preference.

25. The computer system of claim 24, wherein the online travel service exchanger is further configured to negotiate a purchase of the product from the provider selected as a match for the offer.

26. The computer system of claim 24, wherein the travel server component obtains the at least one quote associated with each preferred provider from a global distribution system configured to make available fare information associated with each preferred provider.

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27. The computer system of claim 24, wherein the online travel service exchanger is further configured to evaluate quotes provided by each preferred provider in descending order of preference ranking by determining whether the quotes provided satisfy a preferred criteria associated with each preferred provider.

28. The computer system of claim 24, wherein the online travel service exchanger is further configured to attempt to match the offer with one of the non-preferred providers by evaluating quotes supplied by the non-preferred providers to identify a lowest quote and selecting the lowest quote as the matching quote.

29. The computer system of claim 28, wherein the travel server component obtains the at least one quote associated with each non-preferred provider from a global distribution system configured to make available fare information associated with each non-preferred provider.

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X. EVIDENCE APPENDIX

None.

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XI. RELATED PROCEEDINGS APPENDIX

None.

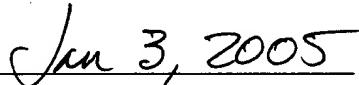
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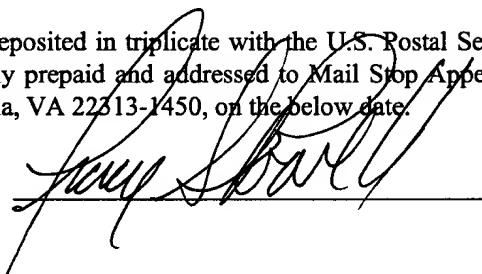
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